



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

[REDACTED]  
Docket No: 6159-21  
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USN, XXX-XX-[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552  
(b) Article 15(e), UCMJ  
(c) Part I, MCM (2008 and 2016 Editions)

Encl: (1) DD Form 149 w/attachments  
(2) NAVPERS 107/601 Immediate Reenlistment Contract of 1 Apr 17  
(3) NCIS Form 5000/1 Report of Investigation of 16 Oct 18  
(4) NAVPERS 1070/607 Court Memo of 23 Jan 19  
(5) NJP Appeal of 7 Mar 19  
(6) NAVPERS 1626/7 Preliminary Inquiry Report of 4 Apr 19  
(7) Counsel's Memo, Appeal of NJP of 11 Apr 19  
(8) NJP Appeal endo 5812 Ser 22/018, 18 Apr 19  
(9) NJP Appeal 5812 Ser N00J/055, 8 May 19

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected by removing all adverse entries relating to his 23 January 2019 and 4 April 2019 nonjudicial punishments (NJP's).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 10 March 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. Petitioner reported to the [REDACTED] ([REDACTED]) on 10 January 2015 and reenlisted for a period of four years on 1 April 2017. Enclosure (2).

c. On 20 August 2018, Petitioner's command conducted an investigation to inquire into anonymous allegations of sexual harassment that surfaced in a command survey. The investigation was halted after allegations of sexual assault surfaced during an interview with one of the victims. As a result, the Naval Criminal Investigative Service (NCIS) took over the investigation and reported two victims of sexual assault. Enclosure (3).

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d. Subsequently, Petitioner was charged with two specifications of violation of Article 120, Uniform Code of Military Justice (UCMJ) (Rape and Sexual Assault). On 23 January 2019 Petitioner was found guilty at NJP of the charges and received a reduction in grade to petty officer second class. Enclosure (4).

e. On 30 January 2019, Petitioner, with counsel, appealed the NJP on the grounds that the offenses preceded the two-year statute of limitations. On 7 March 2019, the Commander (CDR), ██████████ in accordance with references (b) and (c), granted the appeal on the grounds of procedural error because Petitioner was charged and punished based on offenses barred by the statute of limitations. Specifically, the allegations were of abusive sexual contact and not sexual assault, and the statute of limitations applied to all alleged offenses with the exception of a single sexual contact incident that occurred after 23 January 2017. The CDR, ██████████ set aside the NJP held on 23 January 2019 based on offenses committed before 23 January 2017, but authorized the Commanding Officer (CO), ██████████, to hold additional proceedings for the portion of offenses occurring after 23 January 2017. Enclosure (5).

f. On 4 April 2019, Petitioner received NJP for one specification of violation of Article 92, UCMJ (Failure to Obey a Lawful General Regulation). Petitioner was found guilty and he was reduced in grade to petty officer second class. Enclosure (6).

g. By memorandum, on 11 April 2019, Petitioner, through counsel, appealed the NJP on the grounds that the charged timeframe falls far outside the two-year statute of limitations, and therefore cannot properly be the subject of NJP, and the NJP was constitutionally void for vagueness as the charge is not clear of the facts. Enclosure (7).

h. By endorsement, on 18 April 2019, the CO, ██████████ recommended denial of the NJP appeal based on Petitioner's continuous course of misconduct and sexual harassment that continued well into the two-year period in which the CO was authorized to take Petitioner to mast. Additionally, the CO determined that the charges were not vague to the point Petitioner could not defend himself from the allegations. Moreover, Petitioner and counsel were provided a copy of the investigations which clearly identified the complaining witnesses and the substance of their allegations. The CO also noted that the evidence clearly included information on the sexual advances, discomfort of the complaining witnesses and even physical contact. Enclosure (8).

i. By endorsement, on 8 May 2019, the CDR, ██████████ considered Petitioner's appeal on its merits after review by the staff judge advocate. The CDR, ██████████ found that the evidence presented at NJP was sufficient to support the finding that Petitioner committed the offense, and neither of the issues raised in Petitioner's appeal merit a different conclusion. Enclosure (9).

j. Petitioner asserts that he was found guilty at NJP for allegations of sexually abusing two women on several occasions and due to statute of limitations, these charges were dismissed on appeal. He contends that he was charged again based on the same allegations from the same two women, but was instead charged with failure to obey a lawful order, and that he was found guilty at NJP once again. Petitioner also contends that his command subsequently initiated administrative separation proceedings and an administrative discharge board was set to convene on 22 August 2019, however, the board was dismissed on the grounds that the misconduct occurred during a prior enlistment and because the allegations against him were false and all charges were dismissed. Enclosure (1).

k. On 25 January 2022, Petitioner, through counsel, submitted additional documentation contending that his reenlistment was granted on 3 May 2021 in the U.S. Navy Reserve with a rating of HM, and that he is enrolled in the Doctorate program at ██████████ of Health Sciences with a goal of becoming a pharmacist. Petitioner further asserts that on 27 August 2021, he was notified by the ██████████ State

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Board of Pharmacy that approval of his Intern Pharmacist application was stalled because he was previously charged with violation of Article 120, UCMJ. Petitioner asserts that he informed the board that the Article 120 charge was dismissed, but that the false allegations are consistently affecting his ability to move forward. Enclosure (1).

#### CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an error warranting partial relief. The Board noted that the Petitioner furnished sufficient evidence that establishes an error warranting removal of the Court Memorandum documenting his 23 January 2019 NJP. In this regard, the Board noted that this NJP was set aside by an official authorized to do so in accordance with reference (c). The Board thus concluded that the Court Memorandum at enclosure (4) shall be removed from Petitioner's official military personnel file (OMPF).

With regards to remove Petitioner's 4 April 2019 NJP, the Board found no error or injustice warranting corrective action. The Board determined that the CO was within his discretionary authority to conduct mast for Petitioner's misconduct that occurred within the statute of limitations, and Petitioner's evidence did not overcome the presumption of regularity. The Board thus concluded that the NJP imposed on 4 April 2019 shall remain in Petitioner's OMPF.

#### RECOMMENDATION

In view of the above, the Board directs the following corrective action.

Petitioner's naval record be corrected by removing enclosure (4), the Court Memorandum at enclosure (4) documenting Petitioner's 23 January 2019 NJP.

Any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record, and that no such entries or material be added to the record in the future. This includes, but is not limited to, all information systems or database entries that reference or discuss the expunged material.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

4/5/2022

[REDACTED]

Deputy Director

[REDACTED]